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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,561	01/05/2004	Garret F. Geer	62870B	2405

109 7590 06/30/2005

THE DOW CHEMICAL COMPANY  
INTELLECTUAL PROPERTY SECTION  
P. O. BOX 1967  
MIDLAND, MI 48641-1967

EXAMINER
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HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/751,561

**Applicant(s)**

GARRET F. GEER ET AL.

**Examiner**

Yvonne M. Horton

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-26 is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/15/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

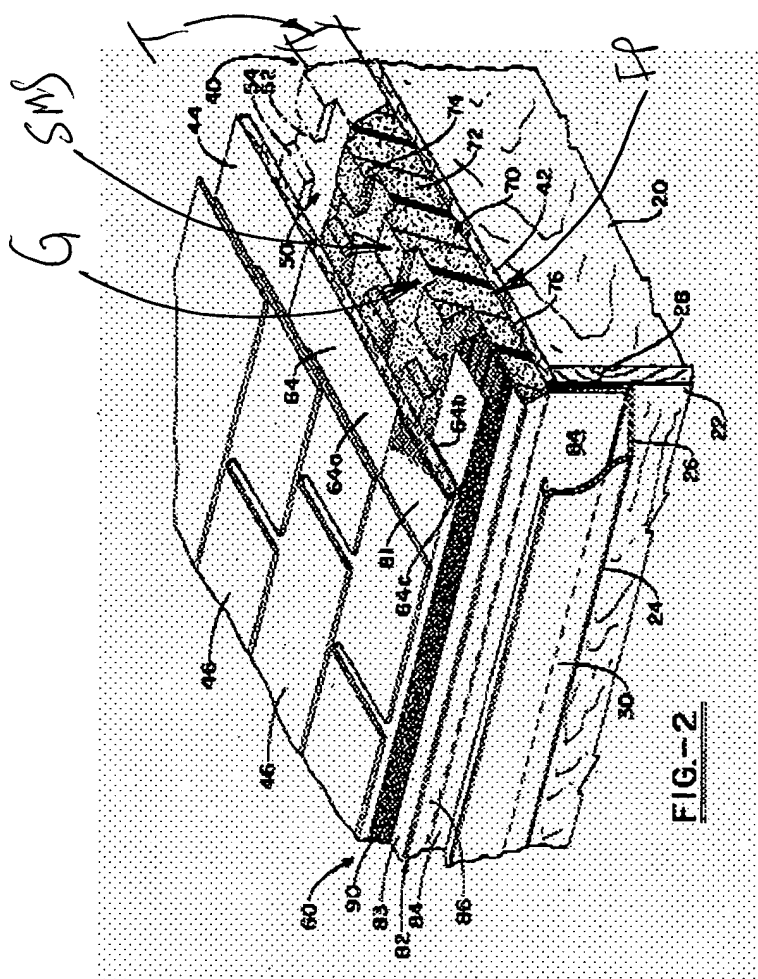
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,473,847 to CROOKSTON in view of either US Patent #6,679,018 to GEORGEAU et al. or US Patent #3,879,508 to GILBERT. CROOKSTON discloses the use of a roof rafter vent and insulation assembly including a generally flexible foam body (50) having a first planar surface (FP) spaced from a second major surface (SMS) by a thickness (T); wherein the second major surface (SMS) includes at least two grooves (G) such that the insulation assembly is sufficiently flexible to seal off the major surfaces (FP,SMS) from fluid communication, column 5, line 9-14, see below. CROOKSTON discloses the basic claimed assembly except for explicitly detailing that



his foam insulation material is polyolefin and except for detailing how flexible his material is. Both GEORGEAU et al. and GILBERT teaches the use of a polyolefin foam material (1,14); respectively, (GEORGEAU et al. column 4, line 22 and GILBERT column 3, line 2) for use in a roof structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the insulation material of CROOKSTON out of the polyolefin materials, as taught by either GEORGEAU et al. or GILBERT, in order to ensure that the material is sufficiently flexible for installation while also having a material that is substantially waterproof. Regarding the angle of bending, it would have been obvious to one having ordinary skill in the art at the time

Art Unit: 3635

the invention was made to select a known material suitable for the use intended as an obvious matter of design choice. For instance a polyolefin material would be more appropriate on sloped roofs as opposed to a flat roof because it is known for its ability to be flexible. In reference to claims 2 and 3, the materials of both GEORGEAU et al. and GILBERT are molded extrusions obviously having an olefin homopolymer. Regarding claim 4, CROOKSTON discloses the use of a polystyrene material. In reference to claims 5-7 and 9-11, CROOKSTON, as modified by either GEORGEAU et al. or GILBERT, does not disclose the specified insulation thickness or degree of bending of the insulation; however, it too would have been an obvious matter of design choice to select the insulation thickness and degree of insulation to depend upon the use intended as an obvious matter of design choice. Also, the degree of flexibility of the insulation depends somewhat on the extent of select product thickness. Regarding claim 8, the insulation thickness (T) of CROOKSTON is less than or equal to the depth between the rafter and the roof deck, see above. In reference to claims 12 and 13, the second major surface (SMS) includes grooves (G) that are extruded/molded.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,473,847 to CROOKSTON in view of either US Patent #6,679,018 to GEORGEAU et al. or US Patent #3,879,508 to GILBERT, as applied to claim 1 above, and further in view of US Patent #5,867,956 to GREGORY, Jr. et al. CROOKSTON, as modified by either GEORGEAU et al. or GILBERT, discloses the basic claimed assembly except for the use of an exterior film. GREGORY, Jr. et al. teaches that it is known in the art to provide a roof insulation material (914) with an exterior film (12). It

Art Unit: 3635

would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the insulation material of CROOKSTON, as modified by either GEORGEAU et al. or GILBERT, with the external film of GREGORY, Jr. et al. in order to further protect the roofing assembly.

***Allowable Subject Matter***

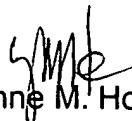
Claims 15-26 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yvonne M. Horton  
6/26/05